

**DEPARTMENT OF STATE REVENUE
LETTER OF FINDINGS NUMBER 06-0026
RESPONSIBLE OFFICER
SALES TAX AND WITHHOLDING TAX
For Tax Period 2000-2002**

NOTICE: Under IC 4-22-7-7, this document is required to be published in the Indiana Register and is effective on its date of publication. It shall remain in effect until the date it is superseded or deleted by the publication of a new document in the Indiana Register. The publication of this document will provide the general public with information about the Department's official position concerning specific issues.

Issue

I. Sales and Withholding Tax -Responsible Officer Liability

Authority: IC 6-2.5-9-3, IC 6-3-4-8 (g), IC 6-8.1-5-1 (b).

The taxpayer protested the assessment of corporate sales and withholding taxes against him as a responsible officer.

Statement of Facts

The taxpayer was listed on Indiana Department of Revenue (department) records as a responsible party of a corporation that did not remit the proper amount of withholding taxes and sales taxes to Indiana for the tax period 2000-2002. The department personally assessed the outstanding corporate withholding taxes, sales taxes, interest, and penalty against the taxpayer. The taxpayer protested the assessment and a hearing was held. This Letter of Findings results.

I. Sales and Withholding Tax -Responsible Officer Liability

Discussion

The proposed sales tax liability was issued under authority of IC 6-2.5-9-3 that provides as follows:

An individual who:

- (1) is an individual retail merchant or is an employee, officer, or member of a corporate or partnership retail merchant; and
- (2) has a duty to remit state gross retail or use taxes to the department;

holds those taxes in trust for the state and is personally liable for the payment of those taxes, plus any penalties and interest attributable to those taxes, to the state.

The proposed withholding taxes were assessed against the taxpayer pursuant to IC 6-3-4-8(g), which provides that “In the case of a corporate or partnership employer, every officer, employee, or member of such employer, who, as such officer, employee, or member is under a duty to deduct and remit such taxes shall be personally liable for such taxes, penalties, and interest.”

Indiana Department of Revenue assessments are prima facie evidence that the tax assessment is correct. The taxpayer bears the burden of proving that the assessment is incorrect. IC 6-8.1-5-1 (b).

The taxpayer presented documentation indicating that his employment with the corporation was terminated on June 29, 1999. Since he was not associated with the corporation after his termination date, the taxpayer did not have a duty to remit sales and withholding taxes to the state for the 2000-2002 tax period. The taxpayer sustained his burden in proving that he did not personally owe the assessed corporate sales and withholding taxes, interest, and penalty to Indiana.

Finding

The taxpayer’s protest is sustained. The taxpayer is not personally responsible for any of the corporation’s trust taxes after June 29, 1999.